

REMARKS/ARGUMENTS

Claims 1-65 are pending in this application.

The Examiner has requested an election of one of the following groups:

- I. Claims 2-31, and 57-65, drawn to methods of eliciting an immunogen specific immune response in a mammal having cancer, comprising administering a liposome delivery vehicle and a recombinant nucleic acid molecule encoding an immunogen which is a tumor antigen, and a composition comprising a liposome delivery vehicle and a recombinant nucleic acid molecule encoding an immunogen which is a tumor antigen.
- II. Claims 2-21, 32-43, and 57-65, drawn to methods of eliciting an immunogen specific immune response in a mammal having an infectious disease, comprising administering a liposome delivery vehicle and a recombinant nucleic acid molecule encoding an immunogen which is an infectious disease antigen, and a composition comprising a liposome delivery vehicle and a recombinant nucleic acid molecule encoding an immunogen which is an infectious disease antigen.
- III. Claims 2-21, 44-49, and 57-65, drawn to methods of eliciting an immunogen specific immune response in a mammal having disease associated with allergic inflammation, comprising administering a liposome delivery vehicle and a recombinant nucleic acid molecule encoding an immunogen which is an allergen, and a composition comprising a liposome delivery vehicle and a recombinant nucleic acid molecule encoding an immunogen which is an allergen.
- IV. Claims 50-53, drawn to methods of eliciting a tumor antigen specific immune response comprising administering a liposome delivery vehicle and total RNA isolated from a tumor sample.

V. Claims 54-55, drawn to methods of eliciting a pathogen antigen specific immune response comprising administering a liposome delivery vehicle and total RNA isolated from an infectious disease pathogen.

Applicants hereby elect Group II relating to infectious diseases.

An election of species was requested to one of the following cytokines:

- a) hematopoietic growth factors
- b) interleukins
- c) interferons
- d) tumor necrosis factors
- e) immunoglobulin superfamily molecules and
- f) chemokines.

Applicants hereby elect Group c) interferons.

Since Applicants elected Group II, another species election has been requested to one of the following pathogens:

- a) HIV
- b) FIV
- c) Mycobacterium tuberculosis
- d) herpesvirus
- e) papillomavirus
- f) Candida and
- g) a parasite.

Applicants hereby elect Group d) herpesvirus.

Based upon the three elections, claims 1-7, 9-21, 32-39, and 56-65 are readable thereon. Applicants note that Claims 1 and 56 are considered linking claims for Groups I-III, as stated on page 3 of the Office Action.

It further states that “[t]he restriction requirement between the linked inventions is subject to the nonallowance of the linking claims.... Upon the indication of allowability of the linking claims, the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability....”

Applicants understand the above to indicate that should one of Groups I-III be elected, the respective linking claims will be examined with the elected Group and should the linking claim be found allowable, the claims of the remaining linked Groups will be rejoined and fully examined for patentability.

Should this understanding be incorrect, Applicants request clarification in the next Office Communication of how the linking claims will be treated with the election of one of asserted Groups I-III.

Presence of Genus Claims

Applicants respectfully traverse the assertion of various clusters of separate inventions that are “linked inventions.” Applicants point out that the alleged separation of the claims occurs in the presence of genus claims. The asserted separation of claims into the Groups within each cluster is an improper separation of the genus into the species alleged *without recognition of the genus claims*.

A generic, or genus, claim is defined at MPEP 806.04(d). No reason has been provided as to why certain claims are not generic, or genus, claims within the definition set forth at MPEP 806.04(d). Applicants respectfully submit that it is improper, as well as inconsistent, to simultaneously allege claims as “linking”, and thus not generic, in one part of the Office Action, and as “generic” in another part of the Office Action.

Recognition of the presence of genus claims is important, because Applicants regard the subject matter of the genus claims as their invention. Any attempt to restrict the genus to be merely species thereof would deny Applicants the ability to seek claims directed to what they regard as the invention. See *In re Weber* (580 F.2d 455, 198 USPQ 328 (CCPA 1978)) and *In re Haas* (580 F.2d 461, 198 USPQ 334 (CCPA 1978)), and the discussion at MPEP 803.02.

These decisions clearly set forth that a restriction requirement cannot be used to divide a single claim, such as a genus claim.

In light of the above arguments, Applicants respectfully request reconsideration and modification of the instant Restriction.

Required election of species

The Office Action further includes a requirement for election of a species from among six alleged cytokines, and among seven alleged pathogens.

Applicants point out that a requirement for an election of species from the genus of claimed compositions must be based upon 37 C.F.R. § 1.141(a) and 1.146, both of which expressly recognize that “a reasonable number” of species may be claimed along with an allowable generic claim within a single application. Applicant points out that there has been no demonstration that “more than a reasonable number of species” is encompassed by the pending claims. To the contrary, Applicants respectfully submit that the presence of a limited number species is clearly “reasonable.” Therefore, the requirement is deficient, because no more than a reasonable number of species is presented in the pending claims.

Moreover, and as set forth at 37 C.F.R. § 1.146, an election of a species is discretionary and results in a restriction *only* “if no claim to the genus is found to be allowable.” Thus the requirement for an election of species is for the purposes of facilitating search and examination. If no prior art is found to anticipate or render obvious the elected species, Applicants respectfully submit that the search of the claims should be extended to the next species to allow for consideration of the generic claim.

In light of the above, Applicants respectfully submit that the requirement for an election of species is misplaced and should be withdrawn.

Applicants reserve the right to pursue the subject matter of any non-elected claim or canceled subject matter in a subsequent application without prejudice.

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Amdt. dated November 10, 2006
Reply to Office Action of September 21, 2006

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6108.

Respectfully submitted,

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